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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 BOARD OF TRUSTEES OF THE BAY AREA ROOFERS)
12 HEALTH & WELFARE TRUST FUND, PACIFIC COAST) NO. C 08 1612 MEJ
13 ROOFERS PENSION PLAN, EAST BAY/ NORTH BAY)
14 ROOFERS VACATION TRUST FUND, BAY AREA)
15 COUNTIES ROOFING INDUSTRY PROMOTION FUND,)
16 BAY AREA COUNTIES ROOFING INDUSTRY) COMPLAINT
17 APPRENTICESHIP TRAINING FUND; BRUCE LAU,)
18 TRUSTEE,)
19)
20 Plaintiffs,)
21)
22 vs.)
23)
24 ROYCE B PETERSON ROOFING INC., a California)
25 corporation doing business as PETERSON &)
26 JENKINS ROOFING COMPANY,)
27)
28 Defendant.)
21 _____)
22)
23)

24 Plaintiffs complain of defendant and for a cause of action
25 allege that:

26 1. Jurisdiction of this Court is founded upon Section 301
27 (c) (1) of the National Labor Relations Act of 1947 [29 U.S.C. §185(a)]
28 and Section 502 of the Employee Retirement Income Security Act of
1974, said Act being hereinafter referred to as "ERISA" (29 U.S.C.
§1132), in that defendant has violated a collective bargaining

COMPLAINT

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1 agreement and certain Trust Agreements, thereby violating the
2 provisions of ERISA and the provisions of the National Labor Relations
3 Act of 1947. This action is also brought pursuant to the Federal
4 Declaratory Judgment Act (28 U.S.C. §2201 et seq.) in a case of actual
5 controversy between plaintiffs and defendant, and for a Judgment that
6 defendant pay fringe benefit contributions in accordance with its
7 contractual obligations.

8 2. Plaintiffs, BOARD OF TRUSTEES OF THE BAY AREA ROOFER
9 HEALTH & WELFARE TRUST FUND, PACIFIC COAST ROOFERS PENSION PLAN, EAST
10 BAY/NORTH BAY ROOFERS VACATION TRUST FUND, BAY AREA COUNTIES ROOFING
11 INDUSTRY PROMOTION FUND, BAY AREA COUNTIES ROOFING INDUSTRY
12 APPRENTICESHIP TRAINING FUND, (hereinafter "Trust Fund"), named in the
13 caption are trustees of employee benefit plans within the meaning of
14 §§3(1) and (3) and §502(d)(1) of ERISA, 29 U.S.C. §1002(1) and (3) and
15 §1132(d)(1), and a multiemployer plan within the meaning of §§3(37)
16 and 515 of ERISA, 29 U.S.C. §§1002(37) and §1145. Plaintiff Bruce Lau
17 is a trustee. Said Trust Fund is authorized to maintain suit as
18 independent legal entities under §502(d)(1) of ERISA, 29 U.S.C.
19 §1132(d)(1).

20 3. Plaintiffs are informed and believe and thereupon
21 allege that defendant, ROYCE B PETERSON ROOFING INC., resides and does
22 business in Redwood City, California. The collective bargaining
23 agreement was entered into in San Jose, CA. Performance of the to pay
24 fringe benefits set forth in the collective bargaining agreement is
25 in this judicial district. ERISA specifically authorizes Trust Funds
26 to bring this action in the district where the plans are administered,
27 29 U.S.C. §1132(e)(2); the plans are administered in the Northern
28 District of California.

1 4. Each and every defendant herein is the agent of each
2 and every other defendant herein. Defendant and each of them are
3 engaged in commerce or in an industry affecting commerce.

4 5. At all times pertinent hereto, defendant was bound by
5 a written collective bargaining agreement with Local 40, of the United
6 Union of Roofers, Waterproofers and Allied Workers, labor
7 organizations in an industry affecting commerce. The aforesaid
8 agreement provides that defendant shall make contributions to the
9 TRUST FUNDS on behalf of defendant's employees on a regular basis on
10 all hours worked, and that defendant shall be bound to and abide by
11 all the provisions of the respective Trust Agreement and Declarations
12 of Trust of said TRUST FUND (hereinafter the "Trust Agreement").

13 6. The TRUST FUNDS rely upon a self reporting system.
14 Defendant has unique knowledge of the amounts of contributions that
15 they are liable to pay each month, and have a fiduciary obligation to
16 accurately report the amount to the TRUST FUNDS.

17 7. Defendant has breached both the provisions of the
18 collective bargaining agreement and the Trust Agreement above referred
19 to by failing to pay all moneys due thereunder on behalf of
20 defendant's employees to the TRUST FUNDS in a timely manner. Said
21 breach constitutes a violation of ERISA (29 U.S.C. 1002, et seq.) and
22 of the National Labor Relations Act of 1947.

23 8. Defendant has failed and refused to pay in a timely
24 manner since August 2007. Pursuant to the terms of the collective
25 bargaining agreements, there is now due, owing and unpaid from
26 defendant to the TRUST FUNDS contributions for hours worked by covered
27 employees for the month of August 2007 through present and liquidated
28 damages and interest which are specifically provided for by said

1 agreements. The total amount due is unknown; additional monthly
2 amounts will become due during the course of this litigation and in
3 the interest of judicial economy, recovery of said sums will be sought
4 in this case. Interest is due and owing on all principal amounts due
5 and unpaid at the legal rate from the dates on which the principal
6 amounts due accrued. The total amount due in this paragraph is
7 unknown at this time, except to the defendant.

8 9. Demand has been made upon said defendant, but defendant
9 has failed and refused to pay the amounts due the TRUST FUND or any
10 part thereof; and there is still due, owing and unpaid from defendant
11 the amounts set forth in Paragraph 8 above.

12 10. An actual controversy exists between plaintiffs and
13 defendant in that plaintiffs contend that plaintiffs are entitled to
14 a timely monthly payment of trust fund contributions now and in the
15 future pursuant to the collective bargaining agreement and the Trust
16 Agreement, and defendant refuses to make such payments in a timely
17 manner.

18 11. The Trust Funds does not at this time seek to audit the
19 books and records of defendant. The only issue raised in this
20 complaint is defendant's failure to complete and file voluntary
21 monthly reports and pay the contributions due. The Trust Fund seeks
22 to obtain a judgment for any outstanding delinquent contributions
23 based on defendant's reports and to reserve the right to audit
24 defendant for this or any other unaudited period.

25 12. The Trust Agreement provides that, in the event suit
26 is instituted to enforce payments due thereunder, the defendant shall
27 pay court costs and reasonable attorneys' fee. It has been necessary
28 for plaintiffs to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,

1 as attorneys to prosecute the within action, and reasonable
2 attorneys' fee should be allowed by the Court on account of the
3 employment by plaintiffs of said attorneys.

4 WHEREFORE, plaintiffs pray:

5 1. That the Court render a judgment on behalf of plaintiffs
6 for all contributions due and owing to the date of judgment based upon
7 unaudited reporting forms, plus liquidated damages provided for by the
8 contract, interest at the legal rate, reasonable attorneys' fees
9 incurred in prosecuting this action and costs.

10 2. That the Court enjoin the defendant from violating the
11 terms of the collective bargaining agreements and the Trust Agreement
12 for the full period for which defendant is contractually bound to file
13 reports and pay contributions to the TRUST FUND.

14 3. That the Court reserve plaintiffs' contractual right to
15 audit defendant for months prior to judgment, and in the event of such
16 audit, collect any additional sums which may be due.

17 4. That the Court retain jurisdiction of this cause pending
18 compliance with its orders.

19 5. For such other and further relief as the Court deems
20 just and proper.

21 DATED: March 24, 2008

ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

23 By: /s/Michael J. Carroll
24 Michael J. Carroll
25 Attorneys for Plaintiffs

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